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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

August 20, 1997

William F. Caton  
Acting Secretary  
Office of the Secretary  
Federal Communications Commission  
1919 M Street NW  
Washington, D.C. 20554

Dear Mr. Caton:

I refer to the Federal Communications Commission's Further Notice of Proposed Rulemaking adopted on July 16, 1997. Please find attached the Japanese Comments on the NPRM. I would be very grateful if you take our comments fully into consideration.

Sincerely,

*Junichiro Miyazaki*  
Junichiro Miyazaki

Counselor of Embassy of Japan

Attachments:

cc: Mr. William Corbett, Office of The U.S. Trade Representative

Mr. Richard Beaird, Department of State

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FEDERAL COMMUNICATIONS COMMISSION  
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Comments on the Notice of Proposed Rulemaking to Allow Non-U.S.-Licensed  
Satellites to Provide Services in the United States Proposed by the Federal  
Communications Commission

The Government of Japan (GOJ) hereby submits the following comments in response to the Commission's Further Notice of Proposed Rulemaking ("Further Notice" (IB Docket No. 97-252)). The comments are not exhaustive and the GOJ may submit additional points in the future, as appropriate.

1. The GOJ welcomes the FCC's proposal to abrogate the application of reciprocal examinations of whether U.S. satellites have "effective competitive opportunities" in foreign markets before allowing a satellite licensed by WTO member countries to serve the U.S. (the "ECO-Sat" test) in implementing the Basic Telecom Agreement under the auspices of the World Trade Organization (WTO).

However, the GOJ is still seriously concerned with the proposal in light of the WTO Agreement and requests the FCC to amend its rules in response to the following comments of the GOJ.

2. With regard to Section 214 entry standard and Section 310 standard for foreign ownership of radio licenses of the Communications Act concerning applications to provide services using satellite systems of WTO member countries, the FCC retains authority to deny the applications on the grounds of "public interest." And such factors as "foreign policy" and "trade concerns" are listed to be considered as "public interest" factors under the Further Notice (paragraph 37).

The GOJ, however, is deeply concerned that these factors, as in the case of applications by NTTA Communications and KDD America, might be used to operate

rules in a way that is inconsistent with the General Agreement on Trade in Services (GATS). In the Further Notice, it is stated that "[t]he WTO Basic Telecom Agreement does not affect" examinations based on the "public interest" (paragraph 37). However, the GATS does not allow application of such examinations, or "public interest" test, in a way that is inconsistent with the GATS. Furthermore, taking "foreign policy" and "trade concerns" into account in the application of the "public interest" test itself could be inconsistent with the GATS. Therefore, the GOJ requests that the FCC at least abolish such factors as "foreign policy" and "trade concerns" and apply its rules in consistency with the GATS.

3. Moreover, under the Further Notice, it is possible for the FCC to deny the applications for reasons of the "very high risk to competition" (paragraph 18). However, detailed criteria regarding the "very high risk to competition" are not made clear in the Further Notice. This means that there is large room for the FCC to exercise discretionary power in deciding whether to allow entry and that its rules lack transparency. Therefore, the GOJ requests that the FCC make publicly available the detailed criteria and apply its rules in consistency with the GATS.

4. The FCC also seeks comment on whether it should apply the ECO-Sat test to services provided between the U.S. and a non-WTO member country using a satellite licensed by a WTO member country (paragraph 25). However, it could be inconsistent with the GATS to apply the ECO-Sat test to non-WTO route markets to be served by WTO member satellites. With a view to promoting multilateral liberalization and expanding the telecommunications market in the world, the GOJ requests that the FCC does not apply the ECO-sat test. Consistency with the GATS, especially with the national treatment commitment of the U.S., needs to be ensured.

5. In paragraph 21 of this Further Notice, the U.S. is proposing to apply the ECO-Sat test to all requests for access by non-U.S. satellite systems for delivery of direct-to-home Fixed-Satellite Services (DTH-FSS), Direct Broadcast Satellite Services (DBS), and Digital Audio Services (DARS), and this proposal is based on an exemption of the U.S. from the most-favored-nation-treatment obligations for those services. However, the GOJ has reserved its position since the WTO negotiations, with respect to the legality of the MFN exemption of the U.S. for direct-to home Fixed-Satellite Services (DTH-FSS), Direct Broadcast Satellite Services (DBS), and Digital Audio Services (DARS).

6. Also, according to the Further Notice, intergovernmental satellite organizations (IGOs) are not covered by the GATS because they are not service suppliers of WTO member countries (paragraph 32). However, when carriers from WTO member countries provide services using IGO satellites, the carriers are, of course, covered by the GATS. Therefore, it should be ensured that carriers from WTO member countries providing services using IGO satellites are treated on a MFN basis .

7. According to paragraph 35 of this Further Notice, the U.S. is said to have preserved its ability to protect competition in the U.S. market, including the possibility of not granting market access to a future privileged IGO affiliate, as a result of reviewing the affiliate's relationship to its IGO parent in paragraph 36. Needless to say, however, the U.S. measures relating to access to the U.S. market by IGO affiliates have to be consistent with the GATS. And the provisions on "Competitive Safeguards" in the Reference Paper would not allow a member government to take any measures including those which are not consistent with the GATS.

8. Besides, even though this Further Notice is intended to be in line with the

WTO Agreement, it is regrettable that the period of time normally required to reach a decision concerning an application for a license is not defined in the Further Notice. The GOJ requests that the period be established promptly by the time the WTO Basic Telecom Agreement takes effect.

9. What is important after the conclusion of the WTO Basic Telecom Agreements is to implement our commitments under the Agreement steadily. The GOJ has already accepted the Fourth Protocol to the General Agreement on Trade in Services on July 4th this year and has finished revising laws necessary to implement its commitments including the abrogation of foreign ownership restrictions and the establishment of interconnection rules. The GOJ requests that the U.S. also take necessary measures promptly and implement its commitments faithfully.

(END)